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NOTES OF CASES.

Automobiles—Care Required in Operation on City Streets.—In *White Swan Laundry Co. v. Wehrhan*, 79 So. 479 the supreme court of Alabama, held that the operators of motor vehicles, as well as pedestrians, on the streets of a city, must recognize the rights of others and take reasonable care and precaution to avoid inflicting wrong and injury; and that what is the exercise of reasonable care depends upon the circumstances of the particular case.

The court said: "By the application of old legal principles to the frequent use of public thoroughfares by motor vehicles, certain regulatory requirements are recognized as attaching and giving rise to mutual duties between travelers on such thoroughfares, the observance of which duties is important to conserve the public safety. The courts applying these rules have announced:

"1. That, while public highways are open to the proper use of automobiles and other motor vehicles, the law exacts of operators of such machines therein a prudent and careful regard for the rights of others who are or may be lawfully using the public way; and the operator is liable for the consequences of negligence, in the operation of any such motor vehicle, to the injury of another traveler who is in the proper use and enjoyment of the common highway. *Barbour v. Shebor*, 177 Ala. 304, 58 South. 276; *McCray v. Sharpe*, 188 Ala. 375, 66 South. 441; *Reaves v. Maybank*, 193 Ala. 614, 69 South. 137; *B. R. L. & P. Co. v. Smyer*, 181 Ala. 121, 61 South. 354, 47 L. R. A. (N. S.) 597, Ann. Cas. 1915C, 863; *Christy v. Elliott*, 216 Ill. 31, 74 N. E. 1034, 1 L. R. A. (N. S.) 215, 108 Am. St. Rep. 196, 3 Ann. Cas. 487; 28 Cyc. pp. 25, 26; 2 R. C. L., 'Automobiles,' p. 1182 et seq.; *Huddy on Automobiles*, §§ 45, 46.

"2. That degree of care to be observed by such operators, with respect to the rights of others lawfully using a public way, is the care a reasonably prudent man would exercise and observe, under like circumstances. That is, the operators of such vehicles, as well as pedestrians on the highway, must recognize the rights of others, and take reasonable care and precaution to avoid inflicting wrong and injury. *Barbour v. Shebor*, supra; *McCray v. Sharpe*, supra; *Reaves v. Maybank*, supra; *A. C. G. & A. Ry. Co. v. Lumpkin*, 195 Ala. 290, 70 South. 162; *B. R. L. & P. Co. v. Williams*, 158 Ala. 381, 48 South. 93; *Cecchi v. Lindsay*, 1 Boyce (24 Del.) 185, 75 Atl. 376; 28 Cyc. 27, 28; 2 R. C. L. p. 1182, et seq.; *Berry Law of Automobiles*, § 124, p. 113; *Id.*, § 171, p. 166; *Huddy on Automobiles*, §§ 46, 47.

"3. What is the exercise of reasonable care by an operator of a motor vehicle on public highways depends upon the circumstances of the particular case, as bearing upon the conduct and the affairs of men; for what may be deemed reasonable and prudent in one

case may, under different circumstances and surroundings, be gross negligence. *Brown & Flowers v. Central of Georgia Ry. Co.*, 197 Ala. 71, 72 South 366; *McCray v. Sharpe*, supra; *Perkins v. Gallo-way*, 194 Ala. 265, 69 South. 875, L. R. A. 1916E, 1190; *Reaves v. Maybank*, supra; *Hood & Wheeler Fur. Co. v. Royal*, 76 South. 965; *Grand Trunk Railway Co. v. Ives*, 144 U. S. 408, 417, 12 Sup. Ct. 679, 36 L. Ed. 485.

"4. The terms 'ordinary care' and 'reasonable prudence,' as applied to the conduct and the affairs of men, are declared to have only a relative significance, depending upon the special circumstances and surroundings of the particular case, and to defy arbitrary definition. When a given state of facts is such that reasonable men may differ as to whether or not negligence intervened, as whether or not ordinary care and reasonable prudence characterized the actions and conduct of an actor, the determination of such question becomes a matter for the jury. *Grand Trunk Ry. Co. v. Ives*, supra; *B. & O. R. Co. v. Griffith*, 159 U. S. 603, 16 Sup. Ct. 105, 40 L. Ed. 274; *Texas & Pacific Ry. Co. v. Gentry*, 163 U. S. 353, 16 Sup. Ct. 1104, 41 L. Ed. 186; *Warner v. Baltimore & Ohio R. Co.*, 168 U. S. 339, 18 Sup. Ct. 68, 42 L. Ed. 491; *Penn. R. Co. v. White*, 88 Pa. 327, 333; 12 *Rose's Notes*, U. S. Rep. 171, 176.

"5. The question of negligence is one of law for the court only when the facts are such that all reasonable men must draw the same conclusion from them.' *Gardner v. Mich. Cent. R. R.*, 150 U. S. 349, 14 Sup. Ct. 140, 37 L. Ed. 1107; *Railway Co. v. Ives*, supra; *Railway Co. v. Cox*, 145 U. S. 593, 606, 12 Sup. Ct. 905, 36 L. Ed. 829; *Tex. & Pac. Ry. Co. v. Gentry*, supra; *Chicago, St. P., M. & O. Ry. Co. v. Nelson*, 226 Fed. 708, 141 C. C. A. 464; *Kreigh v. Westinghouse*, 214 U. S. 249, 29 Sup. Ct. 619, 53 L. Ed. 984; *Delk v. St. L. & S. F. Ry. Co.*, 220 U. S. 580, 31 Sup. Ct. 617, 55 L. Ed. 590; *Railroad Co. v. Miller*, 25 Mich. 274; *Emens v. Lehigh Valley Co. (D. C.)* 223 Fed. 810.

"Mr. Justice Lamar's observations touching 'reasonable prudence' have been often approved by other jurisdictions, state and federal; and were quoted approvingly by this court, as follows, in the case of *Reaves v. Maybank*, supra (193 Ala. 618, 619, 69 South. 137, 138):

"There is no fixed standard in the law by which a court is enabled to arbitrarily say in every case what conduct shall be considered reasonable and prudent, and what shall constitute ordinary care, under any and all circumstances. The terms "ordinary care," "reasonable prudence," and such like terms, as applied to the conduct and affairs of men, have a relative significance, and cannot be arbitrarily defined. What may be deemed ordinary care in one case may, under different surroundings and circumstances, be gross negligence. The policy of the law has relegated the determination of such questions to the jury, under proper instructions from the court.

It is their province to note the special circumstances and surroundings of each particular case, and then say whether the conduct of the parties in that case was such as would be expected of reasonable, prudent men, under a similar state of affairs. When a given state of facts is such that reasonable men may fairly differ upon the question as to whether there was negligence or not, the determination of the matter is for the jury. It is only where the facts are such that all reasonable men must draw the same conclusion from them that the question of negligence is ever considered as one of law for the court.' *Railroad Co. v. Pollard*, 22 Wall. 341, 22 L. Ed. 877; *Delaware, etc., Railroad v. Converse*, 139 U. S. 469, 11 Sup. Ct. 569, 35 L. Ed. 213; *Thompson v. Flint, etc., Railway*, 57 Mich. 300, 23 N. W. 820; *Lake Shore, etc., Railway v. Miller*, 25 Mich. 274; *Grann Trunk Ry. Co. v. Ives*, supra, 144 U. S. 417, 12 Sup. Ct. 679, 36 L. Ed. 485."

Criminal Law—Handcuffing Accused.—In *Blair v. Commonwealth* (Ky.), 188 S. W. 390, 393, the Court of Appeals of Kentucky held that on the trial of a criminal charge before a jury the accused is entitled to be free from all shackles, handcuffs, etc., unless there is evident danger of escape, and to freedom from any physical bonds which might tend to confuse or embarrass his mental faculties, or to create a prejudice against him.

The court said in part: "The manacling of a person when upon trial for a criminal offense, whether in bringing him into court, while in the presence of the court or jury or at any stage of the trial, under such circumstances as appear to have attended the handcuffing of appellant, cannot be too strongly condemned. The record furnishes no justification for the great indignity to which he was thus subjected. Indeed, it could have been excused only on the grounds that it was necessary to prevent his escape, prevent injury to his own person, or probable danger to the court, its officers, or to bystanders from his violence, or to prevent some such misconduct on his part as would have obstructed the work or business of the court, none of which grounds is manifested by the record here. We are not advised that this question has been passed on in this jurisdiction, but in many others it has. The law, as we understand it, is well stated in 12 Cyc. 529, as follows: 'At common law defendant, although indicted for the highest crime, must be free from all manner of shackles or bonds, whether on his hands or feet, when he is arraigned, unless there is evident danger of escape. In the United States the common-law rule is followed, and shackling defendant during arraignment, during the calling and examination of the jurors, or at any time during the trial, except in extreme cases to prevent escape or to protect the bystanders from the danger of defendant's